

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00836
COUNSEL: NONE
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

1. His date of separation be changed from 31 Jul 09 to 31 Aug 09.
2. He be allowed to transfer his Post-9/11 GI Bill benefits to his dependent.

APPLICANT CONTENDS THAT:

1. A severe injustice happened when his request to be extended on active duty was denied. Specifically, as an Air Force colonel his duty assignments were worked through a process that was called the Colonel's Gameplan. He received the outline of this gameplan; however, after discussion with his family, he made the decision not to submit retirement papers before the deadline of Jan 09. Instead, he decided to continue to serve in the Air Force. He had the desire to be stationed in the Washington DC area; however, he knew that if he received orders outside of the area that he would have to consider the 7-day option due to having children in high school.
2. He received an assignment notification to Travis AFB, CA; however, after consideration, he refused the assignment under the 7-day option. His retirement date was set, by regulation, to 1 Aug 09. Subsequently, he received an e-mail from the Colonel's Group regarding the option of extending his retirement date from 1 Aug 09 to 1 Sep 09 in order to qualify for the TEB. In an e-mail he received it stated, "Due to the ambiguity of initial guidance surrounding the Post 911 GI Bill and the Transferability Benefit option, we are offering you the opportunity to request a 1-month extension of your retirement date to retire effective 1 Sep 09 to become eligible for the Post 911 Transferability Benefit Option." He submitted a request for an extension, but received an e-mail from the Colonel's Group stating that his application was not approved because he applied for retirement under the 7-day option.
3. He submitted an appeal to the Air Force's Deputy Chief of Staff for Manpower and Personnel, which outlined the reasons the denial was a severe inequity and requested the denial decision be reversed. He was referred to the next most senior officer on the

Deputy Chief's staff; however, he was told that his appeal would not be granted because he was retiring under the 7-day option.

4. The deadline to make the decision to retire before the gameplan made it impossible for any service member to make a truly informed decision, as the rules for the TEB were not finalized until after the gameplan was complete.

In support of his request, the applicant provides an excerpt from the Department of Veterans Affairs (DVA) Post-9/11 GI Bill Federal Register; Final Rule, a copy of a memorandum from the Under Secretary of Defense, copies of e-mail communications, a memorandum from the applicant, and a copy of the New GI Bill Overview.

His complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant retired from the Regular Air Force on 31 Jul 09 in the grade of colonel (O-6).

The remaining relevant facts pertaining to this application are contained in the letters prepared by the appropriate offices of the Air Force, which are at Exhibit B and C.

AIR FORCE EVALUATION:

AF/DPO recommends denial stating the Secretary of the Air Force provided guidance when implementing the new Post-9/11 GI Bill that would not consider requests of previously approved retirement dates before issuance of the 22 Jun 09 Office of the Under Secretary of Defense Directive-type Memorandum (OUSD DTM). Those officers with approved retirement dates after the OUSD DTM of 22 Jun 09, but before 30 Aug 09 would be allowed to adjust their retirements to meet the requirement of being on active duty on 1 Aug 09; however, this did not apply to retirements in lieu of assignment. The applicant's deliberate decision to retire in lieu of assignment and the corresponding AFI-driven retirement date, which was based on the needs of the Air Force, did not provide a basis for an extension.

Further, the applicant compares himself to an individual with exactly the same service record and the same retirement date, who elected a normal retirement versus a 7-day option retirement. This comparison is not valid because by exercising the 7-day option and declining an assignment, the applicant was no longer serving the needs of the Air Force; therefore, he did not meet the criteria to extend his separation date.

Additionally, the applicant's justification was not IAW the governing instructions. Specifically, a military member can only request withdrawal of retirement or change in month of approved retirement date for three reasons:

- 1) A severe hardship not common to the Air Force members.
- 2) The best interest of the Air Force.
- 3) To accept an active duty promotion that requires member to serve past the original retirement date.

The complete DPO evaluation is at Exhibit B.

AFPC/DPSIT recommends denial stating that the Post 9/11 GI Bill, Chapter 33, became effective 1 Aug 09 based on Post 9/11 Veteran Education Act of 2008. The Public Law states in part, that "an individual may transfer such entitlement only while serving as a member of the Armed Forces when the transfer is executed." Articles were published that explained the program benefits and requirements. This communication plan was carefully implemented because there is no provision in the law or DoD policy for a waiver if a member retires without transferring the benefits. The opportunity to transfer is not an entitlement and is in fact intended as a retention tool in exchange for additional service. Every effort was made, even before the program became available, to convey information to eligible members.

Further, based on AFPC/DPO's disapproval recommendation and the fact that the law states a member must be eligible for benefits effective 1 Aug 09, DPSIT cannot support this request because the applicant does not meet the requirements of the TEB program.

The AFPC/DPSIT complete evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

1. The DPO evaluation states that the governing instructions allows for extension of retirement dates under limited circumstances. Requests are normally only approved based on hardship, the best interest of the Air Force or based on promotion. The instructions also state specifically that under normal circumstances, "To request withdrawal or change month of retirement, the member must submit written justification." A request is initiated by the member; the burden of proof to support the request also rests on the members. The Air Force took a highly unusual step of reaching out to service members, offering the extension without a burden of proof. One must assume that the Air Force was either conceding the burden of proof, or that by offering the extension they were waiving the AFI due to the highly unusual circumstances.

2. While the instruction does state that extensions under the 7-day option are not usually granted, it is not prohibited. Further, DPO sent him an e-mail offering the extension option.

3. In his initial application he drew direct comparison to others with the same retirement date and service records to highlight the injustice; however, DPO stated, "This comparison is not a valid one, in that by exercising the 7-day option and declining assignment, the applicant was no longer serving the needs of the Air Force and therefore did not meet the criteria to extend the date of separation in accordance with AFI 36-2110, Table 2.1, rule 1." In researching the referenced AFI for his rebuttal, he found the quoted reference dealt with assignment availability codes for Operation Bootstrap and not retirement extensions. Without a correct reference, he can only comment that he was serving the Air Force honorably as he did for over 26 years and defending our country no differently than members who were granted the extension.

4. The actions of DPO to seek out and offer this extension to service members, including him, could only be justified because they were deemed to have been in the best interest of the Air Force or that in this instance the AFI did not apply. Finally, he did not prohibit the extension as suggested by DPO.

The applicant's complete submission, with attachment, is at Exhibit E.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinions and recommendations of the Air Force offices of primary responsibility and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. While we note the applicant drew comparison to others with the same retirement date to highlight the injustice, the circumstances in those cases differ from the applicant. Based on our review of the evidence of record, the applicant's retirement was based on the 7-day option rule and appears to have been appropriately executed. Although the applicant was initially offered the opportunity to extend rather than retire, it appears

this was in error as it was overlooked that the applicant's retirement was due to the 7-day option rule. Furthermore, there is no evidence to show that he has been treated any differently than others similarly situated who have been retired under the same rule. Therefore, we find no basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2012-00836 in Executive Session on 13 Sep 12, under the provisions of AFI 36-2603:

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 20 Feb 12, w/atchs.
- Exhibit B. Letter, AF/DPO, dated 12 Apr 12.
- Exhibit C. Letter, AFPC/DPSIT, dated 17 Apr 12.
- Exhibit D. Letter, SAF/MRBR, dated 30 Apr 12.
- Exhibit E. Letter, Applicant, dated 10 May 12, w/atch.

Panel Chair